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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,251	09/19/2003	Paul Feucht	Uni.PA.001	6945
23444	7590	04/10/2006	EXAMINER	
ANDREWS & KURTH, L.L.P. 600 TRAVIS, SUITE 4200 HOUSTON, TX 77002			GREEN, BRIAN	
			ART UNIT	PAPER NUMBER
			3611	
DATE MAILED: 04/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,251	Applicant(s) FEUCHT ET AL.	
	Examiner Brian K. Green	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15 and 36-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15 and 36-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Invention I. in the reply filed on March 2, 2006 is acknowledged.

Claim Rejections - 35 USC § 112

Claims 42-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 42, line 2, there is no antecedent basis for "the flexible hose length portion". In claim 42, lines 1-2 are indefinite since it is not clear whether the applicant is positively claiming that hose in combination with the covering and device. In claim 43, line 6, there is no antecedent basis for "the length of the flexible gasoline hose". In claim 45, line 2, there is no antecedent basis for "the flexible hose length portion". In claim 43, lines 5-6 and claim 45 are indefinite since it is not clear whether the applicant is positively claiming that hose in combination with the device.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12,14,15,36,37,39, and 41-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuller et al. (U.S. Patent No. 5,605,414).

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Fuller et al. shows in figures 1-6 a device comprising a cylindrically shaped foam member (11) capable of being placed on a hose, the foam member (11) having a hollow core extending therethrough, a covering (13) adapted to at least substantially cover the foam insert, a first securing means (16 or 30 or 63), and an advertising display (50). In regard to claims 14 and 37, Fuller shows in figure 2 that the foam insert includes a hollow core and a slit (where the lead line for numeral 20 is directed). In regard to claim 15, Fuller shows in figure 6 a zipper (63) used to attach the cover to the foam member. In regard to claims 41 and 44, Fuller et al. discloses the use of a securing means (16 or 30 or 63). In regard to claims 42-45, the examiner has taken the position that the applicant is not positively claiming the hose in combination with the device. In regard to claim 45, the device can be removed from the article that it is attached to.

Claims 36,37 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Clement (U.S. Patent No. 4,844,000; 5,605,414).

Clement shows in figures 1-3 a device comprising a cylindrically shaped flexible member (14) capable of being placed on a hose, the flexible member (14) having a hollow core extending therethrough, a covering (20 or 21, see column 5, lines 1-6) adapted to at least substantially cover the flexible member, and device is capable of receiving advertising. In regard to claim 37, Clement shows in figure 2 that the flexible member includes a slit (the space between 17 and 18). In regard to claim 44, Clement discloses the use of a securing means (16). In regard to claim 45, the device can be removed from the hose.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al. (U.S. Patent No. 5,605,414).

Fuller et al. discloses the applicant's basic inventive concept except for making the diameter of the hollow core about 1.5 inches. It would have been an obvious matter of design choice to make the diameter of the hollow core about 1.5 inches since the applicant fails to define any advantage to making the diameter 1.5 inches and the size taught by Fuller et al. would work equally well. Further, it is considered within one skilled in the art to vary the diameter of the core as desired.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al. (U.S. Patent No. 5,605,414) in view of Ruiz (U.S. Patent No. 6,079,135).

Fuller et al. does not disclose attaching at least one reflective strip on the covering. Ruiz shows in figures 1-3 a display that includes a reflective strip (7,14) on the cover. In view of the teachings of Ruiz it would have been obvious to one in the art to modify Fuller et al. by attaching a reflective strip to the cover since this would allow the cover to be seen in a better manner during low light conditions.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clement (U.S. Patent No. 4,844,000).

Clement discloses the applicant's basic inventive concept except for making the diameter of the cylinder member about 1.5 inches. It would have been an obvious matter of design choice to make the diameter of the cylinder member about 1.5 inches since the applicant fails to define any advantage to making the diameter 1.5 inches and the size taught by Clement would work equally well. Further, it is considered within one skilled in the art to vary the diameter of the cylinder as desired.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clement (U.S. Patent No. 4,844,000) in view of Ruiz (U.S. Patent No. 6,079,135).

Clement does not disclose attaching at least one reflective strip on the covering. Ruiz shows in figures 1-3 a display that includes a reflective strip (7,14) on the cover. In view of the teachings of Ruiz it would have been obvious to one in the art to modify Clement by attaching a reflective strip to the cover since this would allow the cover to be seen in a better manner during low light conditions.

Response to Arguments

Applicant's arguments filed December 13, 2005 have been fully considered but they are not persuasive.

The applicant argues that none of the prior art references teach or suggest a cylindrical foam member having a hollow core designed for placement on a flexible hose. The examiner

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disagrees since Fuller et al. shows in figures 1-6 a cylindrical foam member (11) that is capable of being attached to a flexible hose. The applicant is not positively claiming the hose so the device of Fuller et al. simply has to be capable of performing the function of being attached to a hose.

The applicant argues that claim 13 includes the feature that the hollow core has a diameter of about 1.5 inches and claim 14 includes the feature that the cylindrical foam member has a longitudinal slit designed for placing it on the flexible hose which are not shown by Fuller et al. The particular size of the core of Fuller et al. could be made in any size as desired and the particular size does not appear to be a patentable feature. Fuller et al. shows in figure 2 that the foam member includes a slit (see the lead line for numeral 20).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRIAN K. GREEN
PRIMARY EXAMINER

Bkg
April 4, 2006